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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

11 In the Matter of

FPPC Case No. 15/957

12 LINDA FOWLER,

STIPULATION, DECISION AND ORDER

13 Respondent.

15 **INTRODUCTION**

16 At all relevant times, Linda Fowler was a member of the Twin Rivers Unified School District
17 (TRUSD) Board of Trustees.

18 In 2013, Highlands Community Charter and Technical Schools (HCCTS) formed as a nonprofit
19 public benefit corporation to operate and control a public charter school.

20 In 2014, HCCTS successfully petitioned TRUSD for approval of a charter petition on behalf of a
21 subsidiary of HCCTS known as Highlands Community Charter School (HCCS). Primarily, HCCS
22 addresses the academic and transitional needs of credit deficient youth and adult students who are
23 seeking a high school diploma or GED.

24 As the chartering authority, TRUSD appointed Fowler to be its representative on the HCCTS
25 Board of Trustees.¹

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28 ¹ Education Code section 47604, subdivision (b), provides: “The governing board of a school district that grants a charter for the establishment of a charter school . . . shall be entitled to a single representative on the board of directors [of the charter school’s governing body]”

1 In 2014, after Fowler helped HCCTS with its charter, she and another person, Angelica
2 Tellechea, formed a partnership known as LAED Consulting. At a board meeting in September of that
3 year, HCCTS was considering whether to enter into a proposed contract with LAED Consulting. Fowler
4 used her official positions to influence the board’s decision in favor of approving the contract with her
5 consulting business—in violation of the conflict of interest provisions of the Political Reform Act.² The
6 contract called for HCCTS to pay \$390,000 to LAED Consulting over five years, at the rate of \$6,500 per
7 month—regardless of the number of consulting hours provided in any particular month. HCCTS
8 rescinded the LAED contract after two months. Only \$13,000 was paid to LAED.

9 **SUMMARY OF THE LAW**

10 The Act and its regulations are amended from time to time. All legal references and discussions
11 of law are intended to be citations to statutes and regulations as they existed during the latter part of
12 September 2014—at the time of the violation in this case.

13 **Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act**

14 When enacting the Political Reform Act, the people of California found and declared that
15 previous laws regulating political practices suffered from inadequate enforcement by state and local
16 authorities.³ Thus, it was decreed that the Act “should be liberally construed to accomplish its
17 purposes.”⁴

18 One purpose of the Act is to prohibit conflicts of interest by public officials.⁵ Another purpose of
19 the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁶

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24 ² The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections
25 81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission
are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references
are to this source.

26 ³ Section 81001, subdivision (h).

27 ⁴ Section 81003.

⁵ Section 81002, subdivision (c); and 87100.

28 ⁶ Section 81002, subdivision (f).

1 **Conflicts of Interest**

2 The primary purpose of the conflict of interest provisions of the Act is to ensure that public
3 officials perform their duties in an impartial manner, free from bias caused by their own financial
4 interests.⁷

5 In furtherance of this goal, the Act prohibits a public official from making, participating in
6 making, or in any way attempting to use her official position to influence a governmental decision in
7 which she knows, or has reason to know, that she has a financial interest.⁸ This prohibition applies to
8 public officials who are members of state and local government agencies—including members of school
9 boards and charter school boards.⁹

10 With regard to a governmental decision that is within or before an official’s agency—or an
11 agency appointed by or subject to the budgetary control of her agency—the official is attempting to use
12 her official position to influence the decision if, for the purpose of influencing the decision, she contacts,
13 appears before, or otherwise attempts to influence, any member, officer, employee, or consultant of the
14 agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on
15 behalf of a business entity.¹⁰

16 Financial interests that may give rise to a conflict of interest include any business entity in which
17 the official is a director, officer, partner, trustee, employee, or holds any position of management.¹¹

18 Generally, if it is reasonably foreseeable that the governmental decision will have a financial
19 effect on the financial interest, and if the effect would be material, then the official has a prohibited
20 conflict of interest.¹²

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24 ⁷ Section 81001, subdivision (b).

25 ⁸ Section 87100.

26 ⁹ Section 82048, subdivision (a). Also, see *Walsh* and *Behrens* advice letters (A-98-234 and A-16-009, respectively).
27 Additionally, see Office of the Attorney General, Opinion No. 11-201, which may be found here:
28 https://oag.ca.gov/system/files/opinions/pdfs/11-201_3.pdf.

¹⁰ See Regulation 18702.3, subdivision (a).

¹¹ Section 87103, subdivision (d).

¹² Section 87103, and Regulation 18700, subdivision (a).

1 When the governmental decision involves the approval of a contract with a particular business
2 entity, that entity is deemed to be directly involved, and the financial effect of the decision on the
3 business entity is presumed to be both material and reasonably foreseeable.¹³

4 SUMMARY OF THE FACTS

5 In 2014, as noted above, Fowler was a member of the TRUSD Board of Trustees, and she was
6 TRUSD's appointed representative on the HCCTS Board of Trustees.

7 Around early September 2014, at the latest, Fowler formed a consulting business named LAED
8 Consulting, which was a partnership between herself and Angelica Tellechea.

9 On September 25, 2014, the HCCTS Board of Trustees held a special meeting. One of the items
10 on the agenda for this meeting was a consulting contract with Fowler's business, LAED Consulting. The
11 contract called for HCCTS to pay \$390,000 to LAED Consulting over five years, at the rate of \$6,500 per
12 month. The last page of the contract included signature blocks for Fowler and Tellechea as signatories on
13 behalf of LAED Consulting.

14 Minutes reflect that when the contract was up for discussion at the meeting, one of the members
15 of the HCCTS Board of Trustees, Jacob Walker, expressed concern about Article 3.1 of the contract,
16 which states: "The monthly compensation [\$6,500] shall be paid regardless of the number of consulting
17 hours provided by Consultant in a particular month." Walker suggested that this provision could be
18 construed as a gift of public funds.

19 Minutes also reflect that Fowler defended the contract provision, suggesting that for this type of
20 consulting contract, there would be some times that there would be more or less work depending upon
21 the time of year, and as such, it was appropriate to have such a clause in the contract. (Although Fowler
22 does not recall making this statement at the meeting, she acknowledges that she approved the accuracy of
23 the meeting minutes at a later board meeting, which took place on October 16, 2014.)

24 Both Walker and Fowler abstained from voting on the LAED contract, but three other members
25 of the board voted to approve the contract. (The remaining two members of the board were noted to be
26 absent.)

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¹³ Regulations 18704.1, subdivision (a)(2); 18705.1, subdivision (b)(1); and 18706, subdivision (a).

1 On or about September 30, 2014, Fowler sent a letter/invoice to HCCS, which stated: “This
2 invoice is for services rendered by LAED Consulting for the month of September 2014. [¶] Please make
3 payment ASAP. [¶] Please make check payable: [¶] Linda Fowler DBA: LAED Consulting.”

4 On or about October 17, 2014, HCCS paid this invoice with a check payable to Fowler dba
5 LAED Consulting in the amount of \$6,500.

6 On or about October 17, 2014, Fowler sent another letter/invoice to HCCS, which stated: “This
7 invoice is for services rendered by LAED Consulting for the month of October 2014. [¶] Please make
8 payment ASAP. [¶] Please make check payable (and all future payments): [¶] Linda Fowler DBA: LAED
9 Consulting.”

10 On or about October 27, 2014, HCCS paid this invoice in full with another check payable to
11 Fowler dba LAED Consulting in the amount of \$6,500.

12 In November 2014, the HCCTS Board of Trustees canceled/rescinded the contract with LAED
13 Consulting, but the sums paid to Fowler pursuant to the contract were not refunded to the school.

14 **VIOLATION**

15 **Count 1**

16 *Conflict of Interest*

17 Fowler had a financial interest in LAED Consulting because she was a partner with respect to that
18 business entity.¹⁴

19 At the HCCTS board meeting of September 2014, for purposes of the Act, Fowler was a public
20 official in her capacity as a member of the board of trustees of the chartering authority, TRUSD. Also,
21 she was a public official in her capacity as TRUSD’s appointed representative on the HCCTS Board of
22 Trustees.

23 As noted above, when the proposed contract with LAED Consulting was being considered at the
24 HCCTS board meeting, one of the board members raised a concern that the monthly payments under the
25 contract could be construed as a gift of public funds. When Fowler spoke in defense of the
26 reasonableness of the monthly payments, she was using her official positions to influence the board

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¹⁴ Section 87103, subdivision (d).

1 decision in her favor. In her capacity as an appointed member of the HCCTS Board of Trustees, she was
2 influencing her own agency. In her capacity as a member of the TRUSD Board of Trustees, she was
3 influencing an agency appointed by or subject to the budgetary control of TRUSD—due to TRUSD’s
4 power to appoint a representative to the HCCTS board, as well as TRUSD’s power to revoke or not
5 renew the school charter per Education Code section 47607.¹⁵

6 Since the governmental decision involved the approval of a contract with a particular business
7 entity, the business entity was directly involved, and the financial effect of the decision on the business
8 entity was both material and reasonably foreseeable.¹⁶

9 In this way, Fowler violated Section 87100.

10 **PROPOSED PENALTY**

11 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per
12 count.¹⁷

13 In determining the appropriate penalty for a particular violation of the Act, the Commission
14 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
15 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
16 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
17 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
18 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
19 record of violations.¹⁸ Additionally, the Commission considers penalties in prior cases with comparable
20 violations.

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24 ¹⁵ See Regulation 18702.3, subdivision (a), which provides: “With regard to a governmental decision which is within
25 or before an official’s agency or an agency appointed by or subject to the budgetary control of . . . her agency, the official is
26 attempting to use . . . her official position to influence the decision if, for the purpose of influencing the decision, the official
contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency.
Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity,
client, or customer.”

27 ¹⁶ Regulations 18704.1, subdivision (a)(2); 18705.1, subdivision (b)(1); and 18706, subdivision (a).

28 ¹⁷ See Section 83116, subdivision (c).

¹⁸ Regulation 18361.5, subdivision (d).

1 Influencing a governmental decision in which an official has a financial interest is a serious
2 violation of the Act. It undermines public trust in government by creating the appearance that the
3 decision was the product of a conflict of interest. Also, such conduct contradicts the Act's decree that
4 public officials should serve the needs of all citizens in an impartial manner—free from bias caused by
5 their own financial interests. In this case, the Enforcement Division found that Fowler intentionally
6 influenced the board's decision—due to a mistaken belief that there could be no conflict of interest if she
7 abstained from voting.

8 Approximately three years ago, the Commission considered another stipulation involving facts
9 that are similar to the current case. *In the Matter of Kendra Okonkwo*; FPPC Case No. 12/334 (approved
10 Apr. 21, 2016), the Commission imposed a penalty in the amount of \$4,000 per count against the
11 executive director of a charter school who used her official position to influence governmental decisions
12 when she negotiated and signed lease agreements between herself and the school for real property in
13 which she had an economic interest. Total lease payments to her from the school exceeded \$300,000.
14 Also, she made governmental decisions by signing contracts on behalf of the school for site
15 improvements to real property in which she held an economic interest. Payments under these contracts
16 exceeded \$60,000. Four counts were charged, for a total penalty in the amount of \$16,000.

17 *Okonkwo* and the current case each involve an official who entered into one or more contracts
18 with a charter school—for the benefit of the official. As in *Okonkwo*, Fowler does not have a history of
19 prior, similar violations of the Act. Additionally, each case involves a respondent who attempted to
20 distance herself from the decision-making process—to some extent. (Fowler did not vote, but she
21 influenced with commentary at the board meeting. *Okonkwo* recused herself from the discussion/vote
22 when the leases were brought forward for consideration.) However, *Okonkwo* involved four different
23 contracts/leases—and the current case involves a single contract only. Also, *Okonkwo* involved
24 substantially larger payments.

25 Under these circumstances, a penalty in the amount of \$3,500 for Count 1 is recommended.

26 A higher penalty is not being sought because the contract with Fowler's consulting business was
27 canceled/rescinded after two months. (According to Fowler, she did not keep any of the funds paid under
28 the contract. She maintains that she cashed both of the monthly checks that she received from the

1 school—totaling \$13,000, without depositing them—and that she gave all of the cash to her business
2 partner, Tellechea, who recalls receiving all of the money, but thought she received some cash plus one
3 or more checks. No supporting documents were provided by Fowler or Tellechea with respect to this
4 transaction.)

5 Nevertheless, Fowler is a sophisticated party with ample reason to know the Act’s conflict of
6 interest rules. She has been a school district official since 1971 (starting with the North Sacramento
7 Elementary School District Board). She holds a law degree, and her work experience includes many
8 years as a financial auditor with the Franchise Tax Board and the Office of the Attorney General.
9 Additionally, the charter school’s formation documents stated that the Political Reform Act’s conflict of
10 interest provisions were applicable, and Fowler helped the school to obtain its charter. Thus, she should
11 have known about the potential for a conflict of interest.

12 CONCLUSION

13 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
14 Respondent Linda Fowler hereby agree as follows:

- 15 1. Respondent violated the Act as described in the foregoing pages, which are a true and
16 accurate summary of the facts in this matter.
- 17 2. This stipulation will be submitted for consideration by the Fair Political Practices
18 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
- 19 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
20 of avoiding the expense to Fowler of continuing to contest the aforementioned issues and to reach a final
21 disposition without the necessity of holding an administrative hearing to determine the liability of
22 Respondent pursuant to Section 83116.
- 23 4. Respondent has consulted with her attorney, Timothy Cary—with the law firm of Price,
24 Postel & Parma, LLP. Respondent understands and hereby knowingly and voluntarily waives, any and all
25 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
26 This includes, but is not limited to the right to appear personally at any administrative hearing held in this
27 matter, to be represented by an attorney at Respondent’s own expense, to confront and cross-examine all
28 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial

1 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
2 reviewed.

3 5. Respondent agrees to the issuance of the decision and order set forth below. Also,
4 Respondent agrees to the Commission imposing against her an administrative penalty in the amount of
5 \$3,500. One or more payments totaling this amount—to be paid to the General Fund of the State of
6 California—is/are submitted with this stipulation as full payment of the administrative penalty described
7 above, and they will be held by the State of California until the Commission issues its decision and order
8 regarding this matter.

9 6. If the Commission refuses to approve this stipulation—then this stipulation shall become
10 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
11 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to
12 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
13 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
14 Director, shall be disqualified because of prior consideration of this Stipulation.

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1 7. The parties to this agreement may execute their respective signature pages separately. A
2 copy of any party’s executed signature page—including a hardcopy of a signature page transmitted via
3 fax or as a PDF email attachment—is as effective and binding as the original.
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6 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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10 Dated: _____

Linda Fowler, Respondent

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12 The foregoing stipulation of the parties “In the Matter of Linda Fowler,” FPPC Case No. 15/957,
13 is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective
14 upon execution below by the Chair.
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16 IT IS SO ORDERED.
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18 Dated: _____

Richard C. Miadich, Chair
Fair Political Practices Commission